

Nguyen (Migration) [2019] AATA 6643 (13 November 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mrs Thi Ha Nguyen
CASE NUMBER:	1714716
DIBP REFERENCE(S):	BCC2015/1746749
MEMBER:	Denis Dragovic
DATE:	13 November 2019
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 13 November 2019 at 1:55pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – lack of evidence parties lived together – lack of evidence parties viewed relationship as long term – purported joint bank account – inconsistent evidence – unreliable witness – credibility issues – relationship ended – DNA test refused – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5, 65

Migration Regulations 1994 (Cth), r 1.15, Schedule 2, cls 820.211, 820.221

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

The Tribunal directs that information that would identify the applicant (including information about family, friends or associates) not be published (under s.378 of the *Migration Act 1958*). This means that if this decision is published, names and other identifying material must be removed from or modified in the published version of the decision.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 19 June 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 18 June 2015 on the basis of her relationship with her sponsor, Andy Du. At that time, Class UK contained Subclass 820. The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
3. The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter, the primary criteria include cl.820.211 and 820.221 of the Regulations, which require that at the time of application and decision, the applicant is the spouse or de facto partner of the sponsor, unless the relationship has ceased and certain circumstances exist. [Details deleted]. The applicant claims this occurred in this case. As such, the relevant question for the Tribunal is firstly, whether the applicant and sponsor had at an earlier stage a mutual commitment to a shared life as a married couple to the exclusion of all others that was genuine and continuing. If I accept this, then the second question is whether the applicant suffered [in the particular circumstance].
4. The delegate refused to grant the visa on 19 June 2017 on the basis that the applicant did not meet cl.820.211 (spouse or de facto partner) because the delegate found that there was insufficient evidence to suggest that the applicant and sponsor present themselves as a married couple or family, that they undertake joint social activities or holidays or attend any significant events together. No claims of [an incident] were raised at the Departmental stage.
5. In a statutory declaration dated 6 August 2019, the applicant stated that her relationship ended at the end of 2017 due to [an incident]. Prior to that on 14 November 2018 the then representative submitted to the tribunal the first claim that the relationship had broken down due to [an incident].
6. The applicant appeared before the Tribunal on 16 August 2019 to give evidence and present arguments.
7. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
8. For the following reasons, the Tribunal has concluded that the **decision under review should be affirmed**.

CONSIDERATION OF CLAIMS AND EVIDENCE

9. On 21 July 2012 the applicant came to Australia on a three-month business visa. Upon expiry of the visa the applicant did not return and she became unlawful. She claims that by the end of that year she met the sponsor, Andy, at a friend's house. They exchanged telephone numbers, kept talking to each other over the phone and decided to go out together. She claims a relationship began two or three weeks after they met and that he proposed to her on the 13 March 2013 after which they moved in together. She claims that they rented a room to live together in another person's house in Sunshine North and then moved to Sunshine West.

10. In October 2013 the applicant became pregnant and gave birth to her son Kevin in 2014 for whom she claims Andy is the father. The Department requested that DNA be provided for the purposes of assessing the applicant's claims but the request was refused. Regarding the refusal to provide DNA, the applicant said that it was her husband who didn't want to do that. She claims that she was not involved in the visa application process. She said that she would have provided the DNA if she was asked.
11. At the hearing she claimed that she has custody of the child and that Andy has not sought access. While it is possible that the claimed father has no interest in parenting the child it is also possible that he is not the father.
12. At the second hearing I enquired further about this situation. The applicant explained her understanding of her husband's reasoning for not supporting the DNA testing as being because of the psychological impact upon the child. I put to the applicant at the second hearing that her previous representative had submitted to the Department a letter stating the following:

On 16 January 2016 the visa applicant Ms Thi Ha Nguyen (sic) to our office and instructed this agent to advise you that her husband and she have chosen not to undertake DNA testing as: (a) they believe they have provided you with sufficient evidence to prove the said relationship; (b) it is costly to undertake the test; and (b) (sic) the test may cause psychological effect to the child when he grows up.
13. I noted that it specifically states that the applicant had attended the offices of the representative and that she had instructed the representative. I put to her that this indicated that she was actively engaged in the process. The applicant responded that she was told by her husband to do so.
14. The applicant's refusal to provide DNA in support of the child's parentage is of concern. On the one hand, considering that the applicant was claiming [an incident] and that she has stated that she subsequently found out that he has other children, it is not unreasonable to conceive a situation in which the sponsor did not want to be tied to the responsibilities of parenting and as such he did not want to have further evidence proving his parentage. It is possible that his subsequent absence and disinterest in the child is a reflection of this. Conversely, it is also possible that the child was not the sponsor's which could undermine the claim of having a mutual commitment to a shared life as husband and wife to the exclusion of all others. That the applicant attended the representative's offices herself and provided the reasoning for not undertaking DNA testing possibly undermines her claims of her sponsor making all of the decisions. [Details deleted]. Given this uncertainty, I turn my mind to other elements.
15. I note that the claim that the DNA test is too expensive is in stark contrast to the evidence of the sponsor being registered with Centrelink as single and not having claimed any child support benefit despite claiming to be living with the child and being registered on the birth certificate as the child's father. Based upon a written submission by the applicant and the sponsor through the then representative dated 16 June 2017 (Department f.211) 'The sponsor states, in addition to his "Carer Allowance", he has also worked as a handyman and earned enough money to look after his wife and their child.' This inconsistency is troubling. Either they had enough money and didn't want to claim any government benefits or they didn't have enough money and could have claimed support. Claiming some benefits such as the carer payment, while working full time, but not wanting other benefits is counterintuitive. It leads me to doubt this element of the reasoning for not providing the DNA and opens some doubt in my mind of the parentage of the applicant's child.
16. I find the other reasons for not undertaking the DNA tests to be similarly weak considering the severe consequences of not responding to the Department's requests. The reasoning

that the child would find out about the DNA tests is within the control of the parents and as such needn't be revealed if they chose not to. That this was given as a reason for not undertaking DNA testing I find vexing. Similarly, that they believed that they had provided enough information is not representative of a couple who are intent on presenting the necessary information so as to be able to live together.

17. When considered cumulatively, I find the arguments to not provide DNA evidence not to be convincing. I note that the sponsor has not sought to have access to the child, which in of itself is not determinative but I give some weight. As is detailed below I have substantial concerns over the applicant's credibility. As such overall I give little weight to the presence of a child in the following considerations of whether the applicant and sponsor had a mutual commitment to a shared life as a married couple to the exclusion of all others that was genuine and continuing.
18. The applicant described their wedding as being delayed after the birth of their child because their financial situation was not good. By 2015, her sponsor had more work and according to the applicant, the sponsor's friends were telling him to marry her so that she could become legal and remain in Australia as the mother of their child. The applicant claims that her sponsor took her to get married before a civil celebrant on the 6 April 2015. After the marriage, the applicant claimed that they had a wedding celebration. I accept that the applicant and the sponsor were legally married on 6 April 2015.
19. The applicant and the sponsor at the Departmental stage provided two interim ANZ statements from 2015, two statements from their ANZ account in 2016 and another 'interim' statement showing a two week period in early 2017. The applicant said that the reason there were only ad hoc statements that covered certain months rather than a complete year was because her husband provided her with a few hundred dollars per month in cash to spend, he handled all of the money with the bank and that she didn't know any more of their banking details. The applicant claims that she didn't have an individual bank account. Despite having a joint bank account, the applicant claimed that she did not have a bank card and did not spend any money from it. I asked why they established a joint bank account if she didn't have a card or spend any money from it. She emphasised again that she stayed at home all of the time and didn't go out [details deleted]. I pressed her again as to why she established a joint bank account. She said that she didn't have a card from any of the accounts she had with him while with him. She said that he told her that since they were married they should have a joint account so she went to the bank to set up the account. At the second hearing she said that she was isolated and rarely went out of her home after mid-2016 because her sponsor was facing financial pressures and she was suffering from depression. She clarified that she received a card only when she ran away from her sponsor in 2018.
20. At the second hearing, I put to the applicant evidence that she had provided to the Department of a bank card valid from July 2015 issued in her name (Department f.40). I noted that she had claimed that she didn't have a bank card. She responded that the sponsor made the card for her after they were married but he kept the card. She then said that it wasn't correct to say that she never used it. She then further clarified that her sponsor took her shopping and he'd place a few hundred dollars into the account for her to use. The applicant added that she was stressed and misunderstood the original question.
21. I read to the applicant from the bank statements which she had provided to the Department listing expenses she had accrued including shopping at Coles, paying fines, cash withdrawals, pharmacies and groceries. I put to her that based upon the bank statements that she had provided the card was being used nearly every day (Department f.47-51). She responded that she misunderstood the question by explaining that the card in question was used as a jointly owned card. I noted that her husband had a separate card issued. I noted

that the bank statements from the joint account they had provided showed that the only expenditure was on her card. I put to the applicant that the so called joint account was apparently being exclusively used by the applicant.

22. The applicant then said that the sponsor kept the card and that he drove her when she needed to do some shopping as she couldn't drive and whenever she appears to have used the card it was actually him using the card with her present. I asked why he didn't use his own card. She said that she didn't know.

23. I then turned to a bank statement from late 2016. I noted that she was spending money at a nail salon, on female clothes and at restaurants. She said that occasionally her husband took her out. I read to her expenditure from a week in November 2016, a period when she claimed that she was reclusive and that her then husband was facing financial difficulty (Department f.170b):

24. 21 November: She had her nails done and was shopping in Woolworths and Coles and shopping in Topshop, Michael Hill Jewellery along with other expenditure.

25. 22 November: Shopping at Target and purchasing fresh seafood

26. 23 November: Shopping for clothes and ate at a restaurant

27. 24 November: Paid for petrol

28. 25 November: Shopping at Aldi and fresh seafood

29. 28 November: McDonalds, Coles, Cute Cutie, shoes at Windsor Smith

30. 29 November: Coles, KFC

31. I suggested to her that this wasn't representative of someone who is reclusive or has financial difficulties. She responded that she became reclusive and had financial difficulties from mid-2017. I put to her that she had earlier said it was mid-2016.

32. I find the applicant's claims in response to the questions over her account to be troubling. I do not accept that the sponsor gave her only a few hundred dollars in cash, controlled the usage of her card or that the applicant lived in isolation. I find that the applicant had access to a joint bank account which was only used by the applicant. I find that the money that was deposited into the account was from sources other than her husband.

33. Overall, I find that the applicant has misrepresented her circumstances before the Tribunal. I do not accept the applicant's response to the information that I put to her, specifically, regarding her claims of being isolated in her home, of not having any access to a bank card, of her husband putting a few hundred dollars into their account for her to use and not being able to spend money. As the extent of the inaccurate information provided by the applicant is considerable I find that she is an unreliable witness and overall lacks credibility. As such I place little weight on the oral evidence provided by the applicant at the hearing. Instead, I place greater weight on documentary and third party evidence.

34. The application is before the Tribunal because the relationship has broken down. The applicant claims that it is for reasons of [an incident].[Details deleted]. The applicant was concerned about the circumstances affecting the child. In the following section when considering whether the applicant and sponsor had a mutual commitment to a shared life as husband and wife to the exclusion of all others I have taken into consideration the possibility that some of the earlier submitted material may have been influenced because of the

claimed [incident]. By doing so I am not determining that [an incident] occurred but rather considering what the impact upon the evidence could have been had it occurred.

Whether the parties are in a spouse or de facto relationship

35. The primary criteria to be satisfied, at the time of application, are that the applicant is not the holder of a Subclass 771 (Transit) visa and that she meets one of the alternate requirements set out in cl.820.211(2), (5), (6), (7), (8) or (9): cl.820.211(1).
36. The Tribunal has reviewed the applicant's movement records which also detail her visa status at various times. The Tribunal is satisfied that the applicant was not the holder of a Subclass 771 (Transit) visa at the time of application. Therefore the Tribunal finds that cl.820.211(1)(a) is met.
37. The subclause relevant to the applicant's circumstances is cl.820.211(2). Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
38. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship.
39. The applicant and the sponsor presented a marriage certificate dated 29 April 2015 solemnised in Victoria in accordance with the *Marriage Act 1961*. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

40. I have considered each of the arrangements set out in Regulation 1.15A (3) under the four headings of financial aspects of the relationship, nature of the household, social aspects of the relationship and nature of persons' commitment to each other.
41. *Financial aspects of the relationship*
42. The applicant did not claim to have any joint assets or liabilities.
43. Regarding the pooling of resources, the applicant claims that the sponsor paid her personal expenses, gave her some cash and after putting some money into a joint account he used her card to purchase items on her behalf. She claims that she did not have an income of her own. Having found the applicant to lack credibility I do not accept the veracity of this explanation. As noted above, the documentary evidence is that the applicant had a bank card in her own name. Deposits appear as cash deposits, which could indicate that the sponsor was providing cash on a regular basis for the applicant to spend as claimed or alternatively that the applicant was working for cash payments. The applicant's claim is that

her sponsor transferred money into a joint account but did not allow her to independently use the money and instead accompanied her shopping on a near daily basis and paid for the expenses using her card. I find this reasoning to be implausible. Having previously found the applicant not credible and there being no documentary evidence to suggest that her husband was making the deposits or paying for her expenses, I give this little weight.

44. I note that the bond on the Gould Street rental property is in the applicant's name. She explained to the Tribunal that the sponsor had told her that his name was on his mother's rental place and that she should have her name on the agreement on the Gould Street house as he was receiving a carer allowance. She claims that she gave her passport to him to do the paperwork and he paid the money. She claimed not to know why this was the case. There is no documentary evidence of this being the case. Considering that I have found the applicant lacks credibility, I give her evidence limited weight. Instead, I give greater weight to the documentary evidence that the applicant alone had a bond on the property that they were purportedly sharing. I nevertheless, give this some weight as the fact that the applicant paid a bond for a property, which is claimed to be occupied on occasion by the sponsor, is a sharing of household expenses. As such, that the applicant had a bond in her own name does not add weight to the claim of pooling of resources but I place some weight on it as evidence of sharing the day-to-day expenses.
45. The applicant's submission of a joint bank account only shows that the account was in both names but it does not show any expenditure by any other card than that of the applicant. When this was put to the applicant at the second hearing she responded that her husband would put money into the account, but physically keep the card and that he would use the card without giving it to her. She claimed that he did this because he didn't want to alert the authorities to his fraudulent behaviour of accessing full-time carer payments from Centrelink while having a full-time job. I do not accept this line of reasoning because the card was being used on a near daily basis in their home area, which detracts from the claim that the sponsor had a full-time job working as a handyman on other sites, and it was also being used to pay for women's items such as jewellery and nail salon services. While it is possible that the applicant and the sponsor spent a considerable amount of time shopping together and the sponsor worked near to their home, I find it doubtful. Considering the serious concerns I have over the applicant's credibility I find that the sponsor did not control the applicant's usage of her card, but rather that the applicant spent her own money. There being no evidence on the bank statements of joint usage I give very little weight to the applicant's bank statement as evidence of the pooling of financial resources.
46. There is no evidence before the Tribunal of legal obligations owed to the other party.
47. The applicant submitted a considerable array of utilities bills including water, electricity and gas (paid in cash, see for example, Department f.159) and bank statements which have grocery purchases. While these statements were in both the applicant's and the sponsor's name, this does not mean that there was any sharing of the household expenses. A name on a utility account alone does not exhibit shared expenses. Other elements of the evidence should be taking into consideration. For example, the Origin bill provided is addressed to both the applicant and sponsor but shows that the previous period's account was settled by cash (Departmental folder f.159). It does not show who paid it nor does it indicate from whose finances. This sheds no further light on whether they were sharing any day-to-day expenses. Considering the applicant's lack of credibility, I give weight only to the documentary evidence, which shows that the utilities were in both parties' names but says nothing of who paid them. As such I give little weight to this being evidence of a sharing of day-to-day household expenses.
48. Regarding the applicant's phone bill, the documentary evidence is that the sponsor had two phone numbers in his name and a contract with Optus. The applicant claimed and I accept

that she used one of those numbers. I give this some weight as evidence of sharing of day-to-day household expenses.

49. The financial aspects of the relationship which could support the claim that the applicant and her sponsor were in a partner relationship is limited. While they had a joint bank account she claimed that she did not have access to it, nor that she contributed to it. This could raise serious questions about the genuineness of the relationship but the applicant's claims of [an incident] could reinforce rather than undermine the claim of being in a spousal relationship. As discussed above, in reviewing the documentary evidence provided by the applicant to the Department, it shows that the applicant did have a credit card in her name (f.40) and that it was being used in various locations for the purpose of buying clothes, jewellery, food, doing nails and attending restaurants (f.165-173). Having found that the applicant had access to the account and the income in the account was from her sources I place little weight on the bank statements for the reason that they simply show that a single card holder, the applicant, was using the account. There is no indication that her husband ever used the account. Similarly, the bond for the house shows that the applicant is owed money from the owner. It does not show that there is a pooling of resources in the form of a bond and as such, I gave this no weight. There being evidence that the couple lived in the same house, the bond suggests that the applicant rented it and contributed to the sharing of day-to-day expenses. The utility bills have both names on them but this only means that one party or the other lent their name to an account. It does not show that income earned was pooled or that household expenses were shared. Overall, I place little weight on the financial aspects of the relationship when considering whether they had a mutual commitment to a shared life as husband and wife to the exclusion of all others.

50. *Nature of the household*

51. The applicant provided a copy of the birth certificate of the child. The birth certificate included the name of the purported father as the sponsor. As noted above the couple refused to provide DNA evidence to prove that the child was the child of the sponsor. This casts severe doubt in my mind over the truth of the claim that the sponsor is the biological father. Photos were provided of the sponsor holding a child. I accept that the child in the photos is the applicant's child. I give little weight to the photos as evidence that the sponsor is the father of the child. The explanation given by the applicant, as discussed above, is unconvincing. I place little weight on the birth certificate as evidence of the parentage of the child. Nevertheless, it is possible that a child born to another father is cared for by the non-biological father. As such, I engage with the question of the extent of care and support the sponsor provided to the child.
52. The applicant claimed that her husband initially provided some care and support in raising the child including changing the nappies, feeding and bathing him. At other times he would do some of the chores around the house including cleaning the house. He was a handyman who worked on repairing houses as a labourer mainly for his friends so that left her to do most of the work at home. The applicant said that her husband would sometimes clean the house if he had the time otherwise she would be the one responsible for that.
53. When Kevin was born the applicant claimed to have lived in a shared house in Sunshine West. She said that her husband would spend some nights in his mother's house looking after his mother. She claims that they didn't live with his mother because he was getting a carer benefit so he was living with his mum a few days a week. In addition she said that she didn't want to live with her mother-in-law. I put to her that it was strange that after the birth of her son she stayed in a shared house while she could have sought support from her mother-in-law to which she responded that the mother-in-law was over eighty years of age and could not offer support.

54. The applicant had at the Departmental stage provided utilities bills (gas, electricity and water) in both of their names at the same address in Deer Park suggesting that they were living at that address together during 2015-2016. The applicant and the sponsor also provided copies of their driver's licences, which both had amended addresses to Deer Park.
55. Regarding the nature of the household, there is little evidence of the sponsor supporting or caring for the child other than the applicant's oral evidence. As I found the applicant not to be a credible witness I place little weight on her claims of her husband's involvement. While the utility bills and other documents show both the applicant and sponsor's name listed as residing in the same home these are not conclusive. They need to be taken into consideration alongside other evidence. In this instance there is little other evidence to suggest that the applicant and sponsor actually lived in the same house. Similarly, any suggestion of shared housework is based solely upon the applicant's oral statement to which I give little weight. As such, overall I give little weight with regards to the nature of the household when considering whether the sponsor and applicant had a mutual commitment to a shared life as husband and wife to the exclusion of all others.
56. *Social aspects of the relationship*
57. The applicant and the sponsor submitted at the Departmental stage photographs from what was claimed to be their home, at their wedding and others showing the purported couple socialising with friends. The photographs of the applicant and sponsor at their wedding show a group of seven people attending the registration and a slightly bigger group attending a dinner at Plume Restaurant. There are pictures of the couple with visitors to their house, at restaurants with friends, at friend's houses, and in various places in Melbourne in 2015, including at a birthday celebration in 2017. The photographic evidence of the wedding and celebration supports a view that the parties represent themselves to other people as being married. The other social photographs show the couple alongside friends at their house and at other locations. While this also can infer that they are representing themselves as a married couple, it could also simply be two friends spending time together. For this reason, I give these photos less weight.
58. At the Departmental visa application stage, two submissions were made by friends and acquaintances about the nature of the relationship. Thi Thu Nguyen, a relative of the applicant's husband and Dinh Thi Kim Ha a friend of hers wrote statutory declarations in support of the relationship. I asked why the applicant had never arranged for a letter from the people who they were living together with (neither of these were housemates) as they could support claims that they were living together in the same room. She said that the co-tenants in the share house were not close friends. I put to her that it seemed strange that those people who would be best placed to verify that she was living with her husband and going into the same room every night were not giving evidence. She said that if she knew that it was important she would have asked them. At the Tribunal stage following the breakdown of the relationship additional statutory declarations were submitted in support of the applicant's relationship and claims of [an incident] including from Nguyen Khanh Phuong Ho, which provides limited examples other than her opinion; Minh Hoang Diep, which infers that the relationship was genuine; and Thi Anh Hong Nguyen, which infers that the relationship was genuine. I give some weight to the opinion of friends about the nature of the relationship.
59. I also note that two psychologist's reports were provided detailing the applicant's self-reported description of her relationship. Similarly, I note the submission of a social worker's report also including self-reported details about the applicant's relationship. I note that neither the psychologist nor the social worker knew the applicant at the time of the relationship. As the reports are both based upon self-reporting and are not contemporaneous to the relationship I give them little weight.

60. At the hearing the applicant claimed that they very rarely socialised. When she was living in the shared houses in 2013 and 2014 she was living with a few of his friends. She said that her husband wouldn't take her out and so she would just stay in the house. She claimed that after the wedding, when they were living in the house, he kept her indoors. These claims were made in the context of her broader claim of [her circumstances]. The photographs submitted at the earlier stages of the application process are that the couple socialised together. This is now being contested by the applicant's evidence at the hearing, namely that she was [details deleted]. When considering whether the applicant and sponsor planned and undertook joint social activities the contradictory evidence is vexing. Given that the applicant is not credible I discount her claims of being limited in her ability to leave the house and instead place some weight on the evidence showing the sponsor and applicant attending to various social functions as evidence of some degree of planned joint social activity.
61. Overall, taking into consideration the above evidence I place little weight on the social aspects of the relationship when considering whether the applicant and sponsor had a mutual commitment to a shared life as husband and wife to the exclusion of all others.
62. *Nature of persons' commitment to each other*
63. Although the applicant claimed that her relationship began in late 2012, was followed by a proposal on 13 March 2013 and that it broke down in 2017, there is little evidence other than the applicant's oral evidence, drivers licence and utility bills that include both names to suggest that they actually lived together. For reasons given above the applicant's oral evidence and utility bills were given little weight as proof of a life lived together. For this reason, I place little weight on the duration of the claimed relationship and the length of time they have lived together.
64. In considering the degree of companionship and emotional support they drew from each other the applicant acknowledges that when they were together they did not discuss whether they would have more children. While not all relationships have children I nevertheless place limited weight on the fact that the applicant and sponsor did not even have the conversation.
65. In the same regard, the applicant provided an itemised Optus phone bill with two phone numbers both in the sponsor's name. I asked the applicant which phone she had used and which her husband during that period (Department f.95). She responded that her phone ended in x838. Through the course of her engagement with the Department only one Optus bill included an itemised list of calls to the Department. Other phone bills submitted included only the cover sheets without the detailed itemised calls. In this itemised list I noted to the applicant that over a period of one month the sponsor's phone records reflected that the sponsor had called the applicant only once. The applicant's itemised phone record shows that she had called the sponsor once in a period of more than a month. I asked whether this was normal in their relationship. She said that her sponsor was busy and that she didn't want to bother him while he was working. While it is possible that the purported couple found no reason to speak with each other when apart I note that the applicant had noted that the sponsor slept a few days a week at his mother's house. This means that the amount of time spent together was limited. That over a period of one month there was only one phone call from each party to the other is vexing. I place weight on the lack of communication between the applicant and the sponsor as shown by the itemised phone bills.
66. The applicant claims that she spoke with her husband about missing her parents and wanting to travel to Vietnam but that he did not respond.
67. In considering the degree of companionship and emotional support they drew from each other I acknowledge the photographs provided, which show them together including celebrating Christmas, but due to doubts over the applicant's credibility, I give them little

weight. The applicant and her sponsor did not discuss the issue of children, something that I placed limited weight on; they appear not to have communicated more generally based upon the telephone records available and her husband's response to her missing her family. While it is possible that her husband was very quiet and did not share his thoughts and feelings and preferred not to communicate over the phone, overall I give limited weight to the companionship and emotional support they drew from each other.

68. Although the applicant and her sponsor claimed to be in a long-term relationship apart from the applicant's evidence, which I have dismissed due to credibility concerns, there is no further evidence that supports the view that the applicant and the sponsor saw themselves in a long-term relationship. As such I give this no weight.
69. Overall, taking into consideration the above evidence I place little weight on the nature of the sponsor and applicant's commitment to each other during the period of their claimed relationship when considering whether the applicant and sponsor had a mutual commitment to a shared life as husband and wife to the exclusion of all others.

CONCLUSION

70. The Tribunal makes the following findings.
71. As stated above, the Tribunal is satisfied that the visa applicant and review applicant are validly married, as required by s.5F(2)(a) of the Act.
72. For the reasons given with respect to the r.1.15A(3) matters, the Tribunal is not satisfied that, at the time of application they:
 - a. had or have a mutual commitment to a shared life as husband and wife to the exclusion of all others, as required by s.5F(2)(b) of the Act;
 - b. had or have a genuine and continuing relationship, as required by s.5F(2)(c) of the Act; and
 - c. lived or live together, or do not live separately and apart on a permanent basis, as required by s.5F(2)(d) of the Act.
73. Given these findings, the Tribunal is not satisfied that at the time of application the parties were in a spousal relationship. Therefore, the visa applicant does not meet cl.820.211. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.
74. As such, I have not considered the applicant's [claims] further.

DECISION

75. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Denis Dragovic
Senior Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).